



SME Advisory Group

Meeting 13 September 2021

By Video Conferencing

Minutes

Attendees:

Minister of State Ossian Smyth - Chair		Aidan Sweeney – IBEC
Ciarán McLoughlin – D/ETE	Grant Gilmore – InterTrade Ireland	Jonathan Small - CCPC
Neil McDonnell – ISME	Sean Downey – CIF	Shane Conneely – Chambers Ireland
Stephen Browne – SFA	Tom Kelly – EI	Brendan Whelan - OGP
Fergal Grogan – OGP	Martin O’Gorman - OGP	OGP Secretariats

Apologies:

Margaret Hearty – ITI	Tonia Spollen Behrens - EI
Caroline Sweeney – ITI	Síona Ryan - CCPC
Declan Hughes – D/ETE	Laura Byrne – D/ETE

1. Previous Minutes and Actions Arising

The Minister of State apologised for the inconvenience of the meeting being rescheduled.

The actions from the previous meeting were noted. With regard to the action on consideration for a webinar concerning CE market products, given the recent extension announced by the UK Government, Minister Smyth noted that it would be more prudent to have a webinar once the situation has developed, this was agreed by the Group.

2. Covid-19 & Brexit

The Minister confirmed that Covid-19 and Brexit would remain as standing items on the Agenda and invited the Group to take the opportunity to share any related matters arising in these areas.

Covid-19

The Minister noted that in March 2020, the OGP published an Information Note on Covid-19 (Coronavirus) and Public Procurement which highlighted the flexibilities afforded by the procurement rules to public bodies in times of extreme urgency due to unforeseen events. The Minister advised that as we are returning to an era of non-emergency procurement, the OGP will shortly publish an updated Information Note emphasising the need for public bodies to attain maximum value for money through competitive procedures. Once published, an email will be circulated to the Group.

IBEC highlighted that we need to be reviewing renewed commitments in ensuring that SMEs can compete for contracts as the situation surrounding Covid-19 unwinds. IBEC noted that Covid-19 had an effect on the overall market place and outlined other factors such as the election and the delay in



forming a Government which all impacted on the normal times for the Government decisions on purchases. In addition, IBEC brought to the Group's attention the inconsistent approach across Government in dealing with contracts that had been in place prior to Covid-19 noting that some Departments worked with suppliers, whilst other terminated contracts early and or little negotiating.

OGP advised that they had not received any specific queries/reports with regard to IBEC's issue concerning inconsistency. The OGP reaffirmed their role and remit outlining that contract management is a matter for each individual contracting authority and the nature and terms of each individual contract would need to be considered on a case-by-case basis. The measures in place to support businesses by the State were noted also.

Minister Smyth noted the inconsistent issue raised by IBEC and acknowledged the OGP's position. Minister Smyth advised that he was a representative of the Government and as such if there were specific examples IBEC wished to bring to his attention to contact his office directly.

Action: OGP to share updated Information Note on Covid-19 (Coronavirus) and Public Procurement with the Group when published.

Brexit

Minister Smyth asked the Group to bring to his attention any issues they were seeing as a result of Brexit. The Minister noted that inflation had started off anecdotal and was now reflective in the broader sectors. Minister Smyth discussed the possible effects on inflation with particular regard to fixed price contracts.

ISME highlighted that the taxpayer may not always get value for money if the tenderer is to include a high level of risk within their submission. ISME highlighted challenges associated with inflation and noted that they are currently seeing all sorts of lines of inflation at present and a large amount is Brexit related. ISME highlighted that the State is going to have to work in a flexible manner with tenderers.

Chambers Ireland advised that they were hearing similar issues, making reference to inflation hot spots in certain supply chains and noted that the matter appeared to be transitioning to other sectors. Chambers Ireland noted that with regard to lower value tenderers suppliers may not be able to tender for same in the future due to rising costs e.g. increase in costs, wage inflation and other difficulties in staffing.

IBEC noted that this issue was creeping in prior to Covid-19 and it is recognising and bringing it back to ensure that procurement is as attractive as possible. IBEC discussed and compared the private sector and public sector procurement. IBEC referred to the issue of insurance liability highlighting the challenges and barriers this can have on SMEs, noting this was to be discussed in regards to Circular 10/2014.

CIF discussed the matter of PI and brought to the Group's attention information published by the OGP and the 'PII Stakeholder Meeting' hosted by OGP Construction Policy. From a construction viewpoint on price inflation it was noted that CIF set up a task force on construction price inflation to bring the industry together and highlighted stakeholders and benefits of same including real time dynamic information for the industry. CIF advised that they have been in discussion with OGP Construction Policy regarding reasonable price variation clauses. CIF made reference to the Northern Ireland, Construction and Procurement Delivery (CPD), procurement guidance note 'Recovery and Transition from Covid-19' concerning facilitating negotiations with contracting authorities and contractors to make sure that the project stays alive and that there is a reasonable open book



assessment. CIF discussed the differences and degree of flexibilities, referring to NEC4 option C. CIF noted if the OGP Construction Policy were speaking to legal teams to possibly point towards same. In addition, CIF noted that they are working with EI on the establishment of a National Centre of Excellence for construction and there was a general discussion on the model. CIF highlighted that they had received communication from clients on ascertaining how they can walk away from bids that they have previously tendered for as they cannot carry the risk.

Minister Smyth acknowledged the points highlighted, there was a general discussion on fixed price contracts and the issue of suppliers considering walking away from bids was noted. Minister Smyth advised that he was aware of the Northern Ireland position outlined.

3. Circular 10/2014: Turnover and Insurance levels.

Minister Smyth advised that the Group touched on the issue of insurance within the last agenda item and signified relevant policies and action plans in this sphere. Minister Smyth referred to emergency contracts during the pandemic and noted some of which were awarded to SMEs, the Minister referred to his responsibility for eGovernment and discussed challenges for SMEs winning public sector IT contracts. Minister Smyth highlighted the benefit of awarding contracts to innovative SMEs that may provide better VFM and noted that this was a priority for him. Minister Smyth outlined Circular 10/2014, the benefits for SMEs and invited the Group to share their view on this matter also.

CIF referred to the colloquium of documents specifically on this issue from a CIF webinar in 2018 which they forwarded to Minister Smyth. CIF discussed administration issues for tenderers with specific regard to making it easier for those to upload their data, noted that the current version of the ESPD was much larger in comparison to the previous Irish versions and queried possibility of looking at an ESPD light. Overarching element is to take the positives out of CSA and enshrining those within new Circular 10/2014. CIF mentioned the possibility to strengthen TAS as it does not work as effective as would like, noted certain works projects for example are outside the scope of the service and also advised that suppliers are afraid to be excluded from future competitions if they reach out to the service.

In terms of the new eTenders platform and with regard to uploading of relevant data for suppliers, the OGP advised that they will engage with the project team, noting that some information may be commercially sensitive as it is out for tender at present.

IBEC discussed registering data on the current eTenders platform, highlighting that the ESPD is a comprised document done at European level but the national levels worked well. In terms of Circular 10/2014 IBEC noted there was a need for the future proofing of eTenders as this still needs to work for SMEs, in addition stated a key element is addressing the engagement piece concerning market engagement and for the suppliers to know who they can bring their innovative ideas to.

Action – OGP to check with eTenders project team on the technical specifications

4. Private Members Bill - Quality in Public Procurement (Contract Preparation and Award Criteria) Bill 2021

The Minister noted that this item had been brought up previously. The Minister asked the members of the Group for their opinions and particularly if they could engage with his office directly.



ISME questioned the need for the legislation and advised that they are happy to engage on this issue. ISME raised the importance of communication with the potential beneficiaries as to what they are trying to do.

IBEC noted that they were not convinced that primary legislation was required. IBEC advised that they and the SFA met with Senator Higgins at the time and noted that it could be beneficial for Senator Higgins to have a discussion with the Group.

Minister Smyth noted that he would ask Senator Higgins to attend meeting.

Action – Members of the Group to engage with Minister Smyth's office directly on their thoughts on the Bill.

5. Social and Green Public Procurement

Minister Smyth made reference to the EPA who were in the process of finalising their updated 2014 publication '*Green Public Procurement: Guidance for the Public Sector*' which will be published shortly.

IBEC queried if the OGP will make any intervention on the OECD draft report on the Circular Economy in Ireland, and noted the deadline for comments is 16 September 2021.

Minister Smyth noted that his officials in the OGP would be reviewing the said draft report.

6. Any Other Business

Minister Smyth noted if the Group had other topics that were not discussed at the meeting and wished to bring same to his attention they could contact his office directly.

IBEC advised of their involvement within one of the regional enterprise plans in which public procurement was highlighted as a primary topic. IBEC stated that this may be an opportune time for the OGP to revisit regional roadshows which were undertaken prior to Covid-19.

Minister Smyth confirmed that he was happy to participate within regional roadshows concerning public procurement.